

Preliminary Review of Decisions of Judge Ketanji Brown Jackson

Bazelon Center for Mental Health Law

Based on our preliminary review of her decisions, we believe that Judge Ketanji Brown Jackson has demonstrated an understanding of disability rights and other civil rights laws and their importance to people with disabilities—and a steadfast commitment to fair, thorough adjudication of their legal claims. We believe she will be a worthy successor to the retiring Justice Stephen G. Breyer, whom she would replace on the United States Supreme Court.

There is much to celebrate in Judge Jackson's nomination to the Supreme Court. The nomination of a Black woman to our nation's highest court is long overdue. We also wholeheartedly commend Judge Jackson's record as a thorough and thoughtful jurist who has repeatedly engaged in searching inquiries regarding the application of the facts to the law in the cases before her. Not least of these are her decisions involving disability rights and other civil rights.

Even before becoming a judge, as a federal public defender in Washington, D.C., Judge Jackson represented criminal defendants with mental health disabilities before the court on which she now sits, the United States Court of Appeals for the District of Columbia Circuit. Her work on their behalf ensured that these individuals would receive high quality representation, and their fair day in court.¹

Since becoming a federal district court judge in 2011, Judge Jackson has shown a keen appreciation for a key principle of our nation's disability rights laws, including the landmark Americans with Disabilities Act (ADA): To have equal opportunities for participation in our workplaces, government programs, and public accommodations, people with disabilities must sometimes be provided accommodations to policies, practices, and procedures. Under our laws, these accommodations must be reasonable, but they must also be effective.

In employment discrimination cases under the ADA and the Rehabilitation Act, which among other things protects federal employees from discrimination, Judge Jackson has repeatedly held that employers must engage in a meaningful, interactive process with

¹ See, e.g., *United States v. Kosh*, 184 Fed. Appx. 4 (D.C. Cir. 2006) (arguing that trial court erred in sentencing a defendant with bipolar disorder to 18 months imprisonment after he violated his supervised release by testing positive for marijuana and failing to report for substance use disorder counseling; it was unreasonable to sentence him to another prison term to help meet his rehabilitative needs); *United States v. Lowe*, 186 Fed. Appx. 1 (D.C. Cir. 2006) (defending on appeal sentence of defendant with "serious mental health problems" to additional 12-months' imprisonment after violation of terms of supervised release).

workers with disabilities to determine what reasonable accommodations they need to do their jobs—and that this duty continues as long as requests for such accommodations may be considered and met. Importantly, in more than one case Judge Jackson has held employers to their duty to consider whether reassigning employees to other positions for which they are eligible may be a reasonable accommodation when other supports will not help the employee perform job duties.

Notably, in the compelling case of a deaf inmate at the D.C. Jail, Judge Jackson held that the jail’s failure to evaluate the inmate’s request for a sign language interpreter so that he could understand information communicated to him by jail staff, and its failure to provide these interpreter services, amounted to deliberate indifference to his rights. Judge Jackson awarded the inmate damages to compensate him for his injuries.²

In a recent decision, Judge Jackson reaffirmed that people with disabilities need not actually experience discriminatory treatment before they sue to prevent it. In a case alleging that Uber discriminated against people who use wheelchairs, for whom Uber cars took longer to arrive and cost more to use, Judge Jackson held that a disability rights advocate did not have to engage in the “futile gesture” of downloading the Uber App in order to have standing to challenge Uber’s policies in court.³ This principle applies in many disability rights and other civil rights contexts, including in cases where people with disabilities at serious risk of unjustifiable institutionalization challenge state and local policies that deny them community-based services and supports.

In a decision interpreting the Individuals with Disabilities Education Act (IDEA), which requires schools to provide students with disabilities an “appropriately ambitious” education that will help them meet “challenging objectives,” Judge Jackson has required that before placing a student with significant behavioral issues in a separate private school, school officials must ensure that the school can provide the student *individualized* supports of adequate intensity, as required by the IDEA, so that the student can receive a free appropriate public education (FAPE).⁴ In another IDEA case, Judge Jackson rejected a school district’s contention that serving a student with significant behaviors was “impossible,” or that the student’s behavior excused the district from placing him in a program that could meet his needs.⁵

Judge Jackson has been vigilant in reviewing administrative decisions denying Social Security disability benefits, and has reversed those decisions in cases involving people

² *Pierce v. District of Columbia*, 128 F. Supp. 3d 250 (D.D.C. 2015).

³ *Equal Rights Ctr. v. Uber Techs., Inc.*, 525 F. Supp. 3d 62 (D.D.C. 2021).

⁴ *W.S. v. District of Columbia*, 502 F. Supp. 3d 102 (D.D.C. 2020).

⁵ *Schiff v. District of Columbia*, Civil Action No. 18-cv-1382 (KBJ), 2019 U.S. Dist. LEXIS 189606 (D.D.C. Nov. 1, 2019).

with mental health disabilities. In these cases and others, she has been appropriately solicitous of pro se plaintiffs who may have misunderstood administrative claim processes, including for disability-related reasons.⁶

Perhaps less helpfully, as discussed below in one case Judge Jackson may not have given appropriate weight to the views of the Equal Employment Opportunity Commission (EEOC) that a worker with a disability experienced discrimination. In that case, Judge Jackson held that the plaintiff, who used a wheelchair, was precluded from bringing suit alleging disability discrimination under the ADA because she had already filed a separate lawsuit under the Family Medical Leave Act (FMLA). The EEOC had issued a letter finding that the employer had discriminated against the plaintiff after the FMLA complaint was dismissed.⁷

In one IDEA case involving the transfer of a student with significant behavioral issues from one private school to another, Judge Jackson held that the transfer to a more restrictive placement did not deny the student FAPE, and that the child could receive additional services to mitigate any harms from the transfer.⁸ Although we do not have all the facts in this case, in general school districts should approach such transitions cautiously, with an understanding that children with disabilities and families may have developed positive relationships with teachers and administrators at their schools. Promotions and other transitions to new classes, grades, and schools should be handled with care to avoid harmful disruption to the child's educational program.

We admire Judge Jackson's thorough approach to adjudicating claims under other civil rights laws providing protections against race, sex, and age discrimination, including in cases where workers allege intersectional discrimination claims. Although we support class actions as a means to advance claims of systemic discrimination against historically marginalized populations, including people with disabilities, we appreciate Judge Jackson's careful, well-reasoned decision not to certify a class of Black employees for settlement of their claims under Title VII of the Civil Rights Act, where it appeared that under the settlement thousands of class members would have likely waived their individual Title VII rights for no compensation.⁹

⁶ *But see Crawford v. Johnson*, 166 F. Supp. 3d 1 (D.D.C. 2016) (holding that pro se plaintiff did not exhaust administrative remedies by attaching documents to EEO complaint that referenced additional discriminatory incidents not enumerated in complaint), *rev'd*, *Crawford v. Duke*, 867 F.3d 103 (D.C. Cir. 1017).

⁷ *Alford v. Providence Hosp.*, 60 F. Supp. 3d 118 (D.D.C. 2014).

⁸ *Ward v. District of Columbia*, Civil Action No. 13-CV-0098 (KBJ), 2014 U.S. Dist. LEXIS 8729 (D.D.C. Jan. 24, 2014).

⁹ *Ross v. Lockheed Martin Corp.*, 267 F. Supp. 3d 174 (D.D.C. 2017).

In sum, after a preliminary review of her cases we believe that Judge Jackson will be a Supreme Court Justice who understands the importance of disability and other civil rights laws, and who is committed to a fair day in court for people bringing claims under these laws. She appears to understand that these laws are intended to have a broad remedial effect on the relationships between persons with disabilities and covered entities like employers, schools, state agencies, and public accommodations. She has been unafraid of taking strong positions on issues where she believes her reading of the law and facts is correct. Like Justice Breyer, Judge Jackson understands the impact of Supreme Court decisions on people with disabilities and other historically marginalized populations. Her thorough, thoughtful approach as a judge indicates a respect for those who come before her seeking justice.

Based on everything we know so far, including our review of her decisions summarized below, we enthusiastically support Judge Ketanji Brown Jackson's nomination for the Supreme Court.

Disability Discrimination – General

- ***Equal Rights Ctr. v. Uber Techs., Inc.*, 525 F. Supp. 3d 62 (D.D.C. 2021):** Court denies Uber's motion to dismiss advocacy organization's claims under the ADA and the District of Columbia Human Rights Act (DCHRA). Following an investigation making use of testers and comparing Uber's wheelchair-accessible vehicles to its standard ones, the Equal Rights Center alleged that Uber discriminated against people with mobility disabilities using non-foldable wheelchairs, because Uber's wheelchair-accessible ride-share services were less reliable, more costly, and took longer to arrive than did standard Uber vehicles.

The Center has standing to sue Uber because one of its members, a longtime disability rights advocate, has standing. Even though the advocate had not downloaded the Uber application, she had heard from others about the inaccessibility of Uber's service, and was not required to "engage in a futile gesture" by downloading and using the application herself.¹⁰ Further, the

¹⁰ In so holding, Judge Jackson rejected the reasoning of the Seventh Circuit Court of Appeals that to have standing to complain such a plaintiff must allege "particular facts and circumstances" illustrating unequal access:

[T]he Seventh Circuit now apparently requires disabled plaintiffs who are aware of documented accessibility problems, and who have been plausibly deterred from relying on the defendant's services based on that knowledge, to *further* specify either the circumstances under which they personally might have otherwise sought to use the inaccessible services or detail the facts that give rise to their contention that the defendant's services are likely to be unavailable to them in particular. This is more than

Center's complaint plausibly alleges that Uber's failure to modify its policies regarding its wheelchair-accessible vehicles discriminated against its members. Among other things, given its control over its drivers and their vehicles, Uber's ride-share vehicles were "public transportation services" regulated by the ADA, and a "place of public accommodation" regulated by the DCHRA.

- ***Pierce v. District of Columbia*, 128 F. Supp. 3d 250 (D.D.C. 2015):** Defendant D.C. Department of Corrections violated the rights of a deaf inmate under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act because jail officials "did *nothing*" to assess the inmate's need for accommodations when he first arrived at the jail, despite their knowledge that he was disabled:

They did not ask Pierce what type of auxiliary aids he needed. They did not hire an expert to assess Pierce's ability to communicate through written notes or lip-reading as opposed to sign language. They did not even consult the Department of Corrections' own policies to figure out what types of accommodations are ordinarily provided to inmates with hearing disabilities. Instead, they figuratively shrugged and effectively sat on their hands with respect to this plainly hearing-disabled person in their custody, presumably content to rely on their own uninformed beliefs about how best to handle him and certainly failing to engage in any meaningful assessment of his needs.

Id. at 254. Further, defendant's insistence that jail officials have no legal obligation to provide Pierce accommodations unless he (1) specifically requested accommodations, and (2) actually needs them, is "untenable and cannot be countenanced":

The District does not explain how inmates with known communications-related difficulties (such as Pierce) are supposed to communicate a need for accommodations, or, for that matter, why the protections of Section 504 and [the ADA] should be construed to be unavailable to such disabled persons unless they somehow manage to overcome their communications-related disability sufficiently enough to convey their need for accommodations effectively. The implications of the District's

is ordinarily required at the pleading stage to establish standing to sue for alleged disability discrimination.

Id. at 78. (citing *Access Living of Metro. Chi. v. Uber Techs., Inc.*, 958 F.3d 604, 614-15 (7th Cir. 2020)).

analysis are troubling, and they sweep broadly—by the District's reasoning, it would appear that only a specific request for a wheelchair would trigger any duty to accommodate an inmate who cannot walk, and a blind inmate would need to make a specific request for a cane or a guide if he desired to move about the prison grounds; meanwhile, prison officials could sit idly by, taking no affirmative steps to accommodate such disabled prisoners and expecting to be able to wield the inmate's failure to request accommodation like some sort of talisman that wards off Section 504 and [ADA] liability in any future legal action. This imagined state of affairs is unquestionably inconsistent with the text and purpose of the Rehabilitation Act and the ADA

Id. at 269-70. Because defendant knew of Pierce's disability and failed to evaluate his need for accommodation, or provide him with his requested accommodation, an American Sign Language (ASL) interpreter, the court holds that defendant intentionally discriminated against Pierce, through its deliberate indifference to his rights, and awards him compensatory damages.

Disability Discrimination – Employment

- ***Mitchell v. Pompeo, No. 1:15-cv-1849 (KBJ), 2019 U.S. Dist. LEXIS 54797 (D.D.C. Mar. 31, 2019):*** Court denies summary judgment to employer U.S. Department of State. A government special agent candidate was terminated when she failed to complete a 1.5-mile-run requirement for the sixth time. Mitchell claimed that the State's failure to accommodate her asthma by refusing to grant a waiver of the run requirement violated the Rehabilitation Act. The court holds that the run requirement measures physical fitness that was an essential function of the special agent position, and that Mitchell did not show that she could have performed the essential functions of the job even with accommodation. However, there is a genuine issue of fact as to Mitchell could have been reassigned to a different position within the Department, and the Department appeared to act in bad faith by not engaging in an interactive process with Mitchell to consider whether she could have been reassigned to another position for which she was eligible.

Notably, “[w]hile it is true that Mitchell bears the burden of convincing a jury that a position for which she was qualified did in fact exist, ‘neither party should be able to cause a breakdown in the process for the purpose of either voiding or inflicting liability[.] . . . At the end of the day, engaging in the “flexible give-and-take” between employer and employee’ that is characteristic of the interactive process promotes the purposes of the Rehabilitation Act because it permits an employee and employer, working together, to ‘determine what accommodation would

enable the employee to continue working.” *Id.* at **41-42 (citing *Ward v. McDonald*, 762 F.3d 24, 32 (D.C. Cir. 2014)).

- ***Tyson v. Brennan*, 277 F. Supp. 3d 28 (D.D.C. 2017):** Court dismisses pro se complaint of a former United States Postal Service employee who alleged disability-based employment discrimination and retaliation. Complaint’s allegations are insufficient to state a plausible claim for disability discrimination, because Tyson did not plead facts showing that he suffered an actionable adverse action, and court lacks jurisdiction over Tyson’s retaliation claim because he failed to exhaust administrative remedies.

(Later, the Court of Appeals for the District of Columbia Circuit affirmed and remanded for the court to determine whether Tyson alleged disability discrimination connected with his allegations regarding solicitation of bribery in his opposition to USPS’s motion to dismiss. *Tyson v. Brennan*, No. 18-5033, 2018 U.S. App. LEXIS 31556 (D.C. Cir. Nov. 7, 2018).)

- ***Von Drasek v. Burwell*, 121 F. Supp. 3d 143 (D.D.C. 2015):** Former Food and Drug Administration (FDA) chemist’s Rehabilitation Act claim for failure to provide a reasonable accommodation for her bipolar disorder survives the Department of Health and Human Services’ summary judgement motion. Although the chemist did not request an accommodation, reassignment to another position, until “literally . . . the eve of her proposed dismissal,” the FDA was still in a position to respond to the request, and had a duty under the Act to consider it. Further, there is a genuine issue of material fact as to whether the chemist could have performed the position to which she requested to be reassigned – “whether [her] performance was irredeemably poor . . . or the product of a specific work environment . . . [that she attributes] to her co-worker’s hostile behavior—i.e., yelling, cursing, sarcasm, and constant criticism” *Id.* at 159-60.

The court also grants summary judgment on the plaintiff’s intentional discrimination and retaliation claims: there was no evidence that the employee was terminated solely because of her disability—given that she did not disclose her disability until after her supervisor commenced the job removal process—and no evidence that she was terminated solely after engaging in protected activity, requesting a reasonable accommodation.

- ***Alford v. Providence Hosp.*, 60 F. Supp. 3d 118 (D.D.C. 2014):** Res judicata – in this case, preclusion of plaintiff’s ADA claim on the grounds that it could have been brought in her prior action under the Family Medical Leave Act (FMLA) – barred a former employee’s ADA suit based on her termination. Because plaintiff’s ADA claim arose from the same core set of facts that were litigated or could have been litigated in the earlier FMLA action, the court dismisses the ADA complaint.

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Of note, although the Equal Employment Opportunity Commission (EEOC) issued a letter after the FMLA action was dismissed finding reasonable cause to believe that Providence Hospital discriminated against Alford, the EEOC letter is “of little consequence to proving a case of disability discrimination, since it is the facts of Providence’s alleged discrimination – not the EEOC’s view of the evidence – that gives rise to Alford’s ADA claim.” *Id.* at 127.

Education of Children with Disabilities

- ***W.S. v. District of Columbia*, 502 F. Supp. 3d 102 (D.D.C. 2020):** Over the school district’s objection, court adopts magistrate judge’s report and recommendation, and remands the case to an administrative due process hearing officer for further factual findings. In the administrative proceeding, the hearing officer did not make factual findings regarding whether the district’s proposed educational placement for an autistic child with attention deficit hyperactivity disorder (ADHD) and an anxiety disorder, a separate school only for children with disabilities, could effectively manage his aggressive behaviors. “[T]he Hearing Officer’s findings say nothing about the *school’s* ability to accommodate the *specific* behavioral problems mentioned in W.S.’s IEP [T]his is so even though the record contains some evidence suggesting that The Children’s Guild might have been able to manage students with aggressive and violent behaviors, because there is other record evidence that cuts in the opposite direction. For example, one witness explained that The Children’s Guild has worked with students exhibiting aggressive behaviors in the past . . . while other witnesses suggested that The Children’s Guild does not generally accept students with serious aggressive behaviors.” *Id.* at 111.

Because the hearing officer improperly concluded, without adequate findings, that the school district’s placement for the child at The Children’s Guild was appropriate, the hearing officer did not make findings, and the court could not assess, whether the child’s parents’ preferred school was an appropriate placement under the IDEA, or whether the equities warranted reimbursing the parents for tuition payments to that school.

- ***Schiff v. District of Columbia*, No. 18-cv-1382 (KBJ), 2019 U.S. Dist. LEXIS 189606 (D.D.C. Nov. 1, 2019):** Court adopts unobjected-to report and recommendation, containing “thorough” analysis and conclusions, of magistrate judge in IDEA case. Plaintiff complained that his ward, who had an intellectual disability, had been denied a free appropriate public education (FAPE) when the district failed to identify a new location of services following student’s expulsion from a non-public school. A hearing officer determined the student had not been denied a FAPE. The court reverses; the school district’s “novel” defenses of

impossibility and “unclean hands” doctrine did not excuse district’s obligation to provide FAPE to the student—and “would undermine the purpose of the IDEA.”

- ***Miser v. District of Columbia*, No. 1:17-cv-2088 (KBJ), 2018 U.S. Dist. LEXIS 164713 (D.D.C. Sep. 26, 2018):** Court adopts unobjected-to report and recommendation of magistrate judge awarding prevailing parent attorney’s fees calculated using the *Laffey* matrix, the commonly accepted benchmark for calculating prevailing market rates for attorneys in complex federal litigation in the District of Columbia,. The court praises the magistrate judges’ “thorough[]” consideration of the issues, including her finding that an attorney’s *Laffey* rate “generally must be treated as reasonable where—as here—the fee application is accompanied by evidence of the attorney’s skill, experience and reputation, and of the prevailing market rates in this community.”
- ***M.G. v. District of Columbia*, 246 F. Supp. 3d 1 (D.D.C. 2017):** Court adopts magistrate judge’s unobjected-to report and recommendation that parent’s placement of a 16-year old student with anxiety, depression and ADHD at a private school is an appropriate parental placement under the IDEA, and that the parent should be reimbursed for her tuition payments to the school. The parent’s placement was appropriate because the defendant school district did not provide the student an IEP with FAPE before the beginning of the school year and, even though the private school did not provide specialized instruction, the student received educational benefit at the school.
- ***Collins v. District of Columbia*, 146 F. Supp. 3d 32 (D.D.C. 2015):** Court adopts magistrate judge’s unobjected-to report and recommendation. Reduction in parent’s requested fee award is warranted under the IDEA; even though the parent prevailed on the primary objective of removing her autistic child from an overly restrictive setting and securing his placement in a less restrictive environment, the parent clearly did not prevail on several other issues in administrative proceedings. Moreover, a reduction in the hourly rate billed by counsel for the parent was warranted because counsel’s statement that the billed rate comported with the standard *Laffey* matrix was insufficient to establish that such rate was the prevailing market rates for IDEA administrative litigation in the area. Further, the attorney’s failure to request a due process hearing earlier in the dispute resulted in resolution of the matter after the attorney’s hourly rate under the matrix increased.
- ***Davenport v. District of Columbia*, No. 13-cv-1014 (KBJ), 2014 U.S. Dist. LEXIS 177824 (D.D.C. Dec. 19, 2014):** Court adopts magistrate judge’s unobjected-to report and recommendation that the plaintiffs’ appeal from the due process hearing officer’s grant of the school district’s motion to dismiss be denied without prejudice, given the parties’ agreement that the hearing officer misapplied a legal standard in its order of dismissal. The court remands the case to the

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hearing officer for hearing on the merits of the plaintiff's complaint that her son was denied FAPE.

- ***Ward v. District of Columbia*, No. 13-CV-0098 (KBJ), 2014 U.S. Dist. LEXIS 8729 (D.D.C. Jan. 24, 2014):** Court adopts magistrate judge's unobjected-to report and recommendation that adult student's complaint be dismissed. Magistrate judge opined that school district's proposal that student be transferred from one nonpublic school to another was not a change of placement to an inappropriately restrictive setting. The change in location is not a change in educational placement, the basic elements of plaintiff's education program remain intact, the new school could fully implement the student's IEP, and the student could receive services to mitigate any negative effects of the transfer.
- ***Jalloh v. District of Columbia*, 968 F. Supp. 2d 203 (D.D.C. 2013):** Court adopts unobjected-to magistrate judge's report and recommendation that a 15-year-old student with disabilities affecting his behavior, including ADHD, was provided FAPE. The school district's failure to ensure that the student's parent attended his Individualized Education Program (IEP) meeting to discuss his educational program and placement does not amount to a substantive violation of his rights under the Individuals with Disabilities Education Act (IDEA). The school district's proposed placement for the student, in a segregated classroom only for students with disabilities in a neighborhood public school, is an appropriate placement, because the school could implement the student's IEP in that classroom.

Social Security

- ***Amos v. Saul*, No. 17-cv-1707 (KBJ), 2019 U.S. Dist. LEXIS 127511 (D.D.C. July 31, 2019):** Court adopts magistrate judge's unobjected-to report and recommendation. Administrative law judge's decision denying veteran with post-traumatic stress disorder (PTSD), hearing loss, and migraines Social Security disability benefits must be remanded for further proceedings. Under applicable Social Security Administration policy, the ALJ should have explained whether and how he considered the plaintiff's Veteran's Administration (VA) disability rating—that he was 50 percent disabled due to symptoms related to his PTSD—but did not.
- ***Johnson v. Berryhill*, No. 16-cv-0603 (KBJ), 2017 U.S. Dist. LEXIS 102730 (D.D.C. July 3, 2017):** Court adopts magistrate judge's unobjected-to report and recommendation reversing administrative law judge's denial of plaintiff's application for Social Security benefits. Plaintiff, a minor child with a learning disability and depression, turned 18 during the administrative proceedings. The magistrate judge's "careful and thorough" report recommended that the ALJ's "deficient and, in fact, self-contradictory" decision be reversed because the

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determination did not fully explain how it reached its conclusion, and failed to explain whether and how the plaintiff's former special education teacher's testimony regarding her limitations was credited.

- ***Dowell v. Colvin*, 232 F. Supp. 3d 1 (D.D.C. 2017):** Court adopts magistrate judge's unobjected-to findings and recommendation that plaintiffs' motion for reversal of administrative decision denying him Social Security benefits be granted. The administrative law judge's findings that the plaintiff could perform light work were not supported by substantial evidence, and failed to consider the functional limitations of the plaintiff's conditions.
- ***Campfield v. Comm'r of Soc. Sec.*, 228 F. Supp. 3d 87 (D.D.C. 2016):** Court adopts magistrate judge's report and recommendation that plaintiff's request for reversal of administrative law judge's denial of Social Security benefits be denied. Plaintiff's late-filed attempt to supplement the record with additional facts is not a proper objection to the magistrate judge's opinion; even if it were timely and proper, her submission of records documenting her clinical depression was germane to a condition that she could have raised in her administrative proceedings but did not. Further, additional documentation regarding injuries to her spine and lower extremities is similar to documentation the magistrate judge had already considered, and would not have changed either the ALJ's or the magistrate judge's rulings.
- ***Thigpen v. Colvin*, 208 F. Supp. 3d 129 (D.D.C. 2016):** Court adopts magistrate judge's unobjected-to report and recommendation. Substantial evidence supported the administrative law judge's decision that the claimant, a 24-year-old man with schizoaffective disorder, bipolar disorder, depressive disorder, and PTSD, was not disabled for purposes of eligibility for Social Security benefits. The ALJ provided exhaustive explanations for his conclusion that the record did not substantiate claimant's alleged disabling mental health symptoms.
- ***Perry v. Colvin*, 159 F. Supp. 3d 64 (D.D.C. 2016):** Court adopts unobjected-to magistrate judge's report and recommendation denying plaintiff's motion for reversal of administrative law judge's denial of Social Security benefits. The ALJ's decision was supported by substantial evidence in the record; the opinion of plaintiff's treating physician was not entitled to substantial weight due to inconsistencies and questionable assertions (the physician had also been disciplined for "over diagnosing, over treating, and over prescribing" medications).

- ***Meriwether v. Colvin*, No. 12-cv-0067 (KBJ), 2015 U.S. Dist. LEXIS 65337 (D.D.C. May 19, 2015):** Court adopts magistrate judge’s unobjected-to findings and recommendation that case should be remanded to administrative law judge for further proceedings. In deciding Meriwether’s claims that because of her bipolar disorder, schizophrenia, and substance use disorder she could not work and as such was entitled to Social Security benefits, the ALJ did not fully develop the record—even though D.C. Circuit precedent heightened the duty of the ALJ to develop the record in cases involving unrepresented claimants with mental illness. This resulted in an “evidentiary gap” that did not support the ALJ’s denial of benefits. The ALJ also did not afford Meriwether’s treating professional’s report adequate weight in reaching his decision, again in violation of D.C. Circuit precedent.

Other Cases Involving People with Disabilities

- ***Edwards v. United States*, No. 18-cv-2560 (KBJ), 2020 U.S. Dist. LEXIS 94092 (D.D.C. May 29, 2020):** Court dismisses former postal worker’s complaint against the federal Office of Workers’ Compensation Programs (OWCP), which had erroneously terminated her benefits under the Federal Workers’ Compensation Act (FECA). Court lacks jurisdiction over Edwards’ claims for intentional and negligent infliction of emotional distress; the exclusive means of obtaining relief for FECA claims is through administrative procedures with the OWCP. Further, Edwards fails to state a claim under the ADA, because that statute does not apply to the federal government.
- ***Keister v. AARP Benefits Comm.*, 410 F. Supp. 3d 244 (D.D.C. 2019), *aff’d*, 839 Fed. Appx. 559 (D.C. Cir. 2021):** Court grants disability benefits plan administrator’s summary judgment motion. Plaintiff, a former AARP employee who filed for short-term and then long-term disability benefits following a stroke, could not appeal the plan’s denial of long-term benefits after he signed a separation agreement, including a general release of all claims. Keister’s Employee Retirement Income Security Act (ERISA) claim is not among those claims excepted from the general release, and under D.C. Circuit precedent his proffered extrinsic evidence containing allegedly misleading statements from AARP representatives could not be relied upon to show an intent to defraud him, given the release’s unambiguous waiver language.
- ***Adamski v. McHugh*, 304 F. Supp. 3d 227 (D.D.C. 2015):** Veteran’s claim that the Army acted outside its authority (“*ultra vires*”) when it applied a 2006 regulation to time-bar his 2011 appeal of its denial of his application to change his discharge status from “voluntary” to “disability,” after he began experiencing PTSD symptoms following a parachute-jumping accident, is timely. However, the claim is subject to prudential exhaustion to permit the Army to reconsider

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whether to apply the 2006 regulation to Adamski's case, thus further enhancing the record for judicial review. Because the Army did not contend that Adamski had failed to exhaust his administrative claim, and because exhaustion is an affirmative defense for the Army to raise, not a requirement for Adamski's pleading, the court orders a limited discovery period for the parties to engage in fact-finding on the exhaustion issue.

Race Discrimination

- ***Barber v. District of Columbia Gov't*, 394 F. Supp. 3d 49 (D.D.C. 2019):** Former administrative law judge's employment discrimination and whistleblower claims could go forward, while other constitutional and state tort claims must be dismissed. Barber brought Title VII and District of Columbia Human Rights Act (DCHRA) race discrimination claims related to her tenure and eventual termination, including repeated denials of promotions, and alleged retaliation after she filed an internal complaint about race discrimination in the assignment of complex cases.
- ***Ross v. Lockheed Martin Corp.*, 267 F. Supp. 3d 174 (D.D.C. 2017):** Court declines to certify a settlement class alleging both racially disparate treatment and disparate impact discrimination. Following *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), the court holds that plaintiffs' contention that "companywide evaluation procedures often resulted in ratings that were poorly correlated with job performance . . . however plausible, [did] not supply an account of how those procedures themselves resulted in the racially disparate outcomes that Plaintiffs have observed in Lockheed's overall workforce," and that "Plaintiffs have pointed to no evidence of biased decision making of any kind, and certainly not statistical evidence of the type that demonstrates that . . . discretionary ratings decisions led to racially disparate outcomes *in a common way*." *Id.* at 198.

The court also expresses "serious fairness concerns" with the breadth of the release of potential discrimination claims by absent class members, the adequacy of the settlement fund, the prescribed opt-out procedures (including that thousands of employees who were not expected to respond to the class notice would waive all potential claims without any compensation), and the overall claims administration process.

- ***Horsey v. U.S. Dep't of State*, 170 F. Supp. 3d 256 (D.D.C. 2016), *aff'd*, 805 Fed. Appx. 10 (D.C. Cir. 2020):** Court grants Department's motion to dismiss, without prejudice to pro se Black employee's filing an amended complaint on his claims that he was subjected to a hostile work environment and suffered retaliation and discrimination through the Department's proposed indefinite

suspension after his security clearance was revoked. Horsey's complaint contained "at least some factual kernels" that might support his claim under Title VII that the basis for the termination of his security clearance was a knowingly false and discriminatory report or referral. *Id.* at 270 (citing *Rattigan v. Holder*, 689 F.3d 764, 770 (D.C. Cir. 2012)).

- ***Crawford v. Johnson*, 166 F. Supp. 3d 1 (D.D.C. 2016):** Department of Homeland Security employee's claims of race discrimination and retaliation must be dismissed. Crawford did not allege three specific instances of discrimination in his administrative complaint to the Department, but only included attachments to the complaint that allegedly referenced these examples of harassment; this was insufficient to exhaust his administrative remedies. Crawford also failed to amend his administrative complaint to include the specific allegations allegedly reflected in the attachments "even after it became clear that the EEO office had not considered those events in its adjudication of [his claims]." *Id.* at 9.

(The Court of Appeals for the District of Columbia Circuit later reversed this decision in part. According to the reviewing panel, "[a]ttachments to a formal EEO complaint are an integral part of the complaint and can independently identify claims for resolution regardless of whether the attachment is also referenced in the body of the complaint itself." *Crawford v. Duke*, 867 F.3d 103, 107 (D.C. Cir. 2017)).

- ***Johnson v. Perez*, 66 F. Supp. 3d 30 (D.D.C. 2014), *aff'd on other grounds*, 823 F.3d 701 (D.C. Cir. 2016):** Court grants U.S. Department of Labor's summary judgment motion; "Johnson offers no evidence that racial animus was at the root of the allegedly discriminatory treatment . . . especially in light of the fact that [he] was hired and fired by the same persons—one of whom was African American." *Id.* at 35. Further, the acts of Jackson's supervisors, "although obviously unpleasant and highly questionable," were not sufficiently severe and pervasive enough to support his hostile work environment discrimination claim. *Id.* at 44.
- ***Sledge v. District of Columbia*, 63 F. Supp. 3d 1 (D.D.C. 2014):** Black police officer with hypertension could not maintain a claim for retaliation under Title VII because "any reports and complaints that Sledge made about . . . alleged discrimination and retaliation on the basis of his medical condition (without reference to race discrimination) cannot give rise to a retaliation claim under Title VII." *Id.* at 20. Plaintiff's claims of racial discrimination and hostile work environment are also dismissed.

Sex Discrimination:

- ***Sourgoutsis v. United States Capitol Police*, No. 16-cv-1096 (KBJ), 2020 U.S. Dist. LEXIS 221485 (D.D.C. Nov. 24, 2020):** Following a trial in which judgment was entered in favor of employer on sex discrimination claims, but jury found that sex was a motivating factor in former police officer's termination, court holds that Sourgoutsis was not entitled to a permanent injunction seeking to change her employer's policies and practices with the aim of ending agency-wide gender discrimination. Sourgoutsis' requested relief was overbroad, given the lack of evidence presented at trial that other female officers experienced discrimination. Further, there was no reasonable expectation that the Capitol Police would discriminate against her in the future, given that she had not worked for defendant for nearly four years and was unlikely to be rehired.

Intersectional Discrimination:

- ***Rae v. Children's Nat'l Med. Ctr.*, No. 15-cv-0736 (KBJ), 2020 U.S. Dist. LEXIS 242523 (Dec. 28, 2020), *appeal filed*, No. 21-7009 (D.C. Cir.):** Over plaintiff's objection, court holds that, although magistrate judge's report and recommendation contained legal errors, there is insufficient record evidence of causation with regard to plaintiff's wrongful termination, race and national origin discrimination, and retaliation claims. As such, defendants are entitled to summary judgment.
- ***Martin v. United States EEOC*, 19 F. Supp. 3d 291 (D.D.C. 2020):** Court dismisses pro se litigant's First Amendment and Freedom of Information Act claims against the EEOC; given the dismissal of those claims, the District of Columbia District Court is an inappropriate venue for Martin's race and gender discrimination claims, and other claims, against his employer, a charter school operator based in San Antonio, Texas, and its employees and agents. Court transfers those claims to the United States District Court for the Western District of Texas.
- ***Willis v. Gray*, No. 14-cv-1746 (KBJ), 2020 U.S. Dist. LEXIS 27079 (D.D.C. Feb. 18, 2020):** Court denies in part employer District of Columbia Public Schools' (DCPS') motion to dismiss plaintiff's age- and race-discrimination claims. Willis, a Black 51-year-old biology teacher at a DCPS high school, alleged both that a reduction in force (RIF) of hundreds of veteran teachers was pretext for discrimination against older Black teachers, and that his school principal's decision to include him in the RIF was made with particular discriminatory intent. Court dismisses Willis's general claims that the RIF was discriminatory as precluded by earlier litigation brought by the Washington

Teachers' Union, but holds that his individual race and age discrimination claims were not precluded and could proceed.

- ***Njang v. Whitestone Grp., Inc.*, 187 F. Supp. 3d 172 (D.D.C. 2016):** Plaintiffs' claims of race discrimination under 42 U.S.C. § 1981 are dismissed as time-barred. However, as Njang's separate Title VII claims of race and national origin discrimination might survive summary judgment under the "cat's paw" discrimination theory announced by the Supreme Court in *Staub v. Proctor Hosp.*, 562 U.S. 411 (2011), a theory not argued by either party, court orders parties to brief submit additional briefing on this issue.
- ***Raymond v. Architect of the Capitol*, 49 F. Supp. 3d 99 (D.D.C. 2014):** Court grants employer's summary judgment motion and dismisses plaintiff's claims of discrimination based on age and national origin. Raymond, a 56-year-old Black male of Jamaican descent, was denied a competitive promotion, but failed to establish that his employer's proffered reason for not selecting him was pretext for discrimination because (1) there was no significant gap in qualifications that would raise any inference of discrimination (and facts suggested that the employee who was promoted was more qualified and performed better in an interview), (2) there was no dispute that the employer followed its usual procedures in the promotions process, and (3) that process, in which a committee of three each independently evaluated applicants, effectively insulated the selection determination from challenge based on one committee member's alleged discriminatory animus toward Raymond.
- ***Beshir v. Jewell*, 961 F. Supp. 2d 114 (D.D.C. 2013):** Court dismisses claims of U.S. Department of Interior worker, a 51-year-old Black female, of disparate impact and hostile work environment based on race, sex, and age. Granting summary judgment to the Department, court holds that its actions were legitimate and nondiscriminatory, and that Beshir offered no evidence to show pretext for discrimination. With respect to Beshir's hostile work environment claim, court states that "[t]his is not a case in which an employee found herself perpetually subjected to the wrath of others in the workplace through no fault of her own and without any clear explanation other than discriminatory animus. Quite to the contrary, the undisputed facts show that the purported harassment that Beshir allegedly experienced occurred as a result of, and in response to, Beshir's own conduct." *Id.* at 129.